

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 WAYLAND COLLINS, ET AL.,

7 Plaintiffs,

8 v.

9 JOHN. C. BENTON DBA Q&M MOTOR
TRANSPORTS, ET AL.,

10 Defendants.
11

Case No. 2:19-cv-01970-JAD-DJA

ORDER

12 This matter is before the Court on Defendants' Emergency Motion to Compel Production
13 of Documents Responsive to Subpoena or, Alternatively, Motion to Transfer Enforcement of
14 Subpoena (ECF No. 1), filed on November 8, 2019.

15 **I. BACKGROUND**

16 This action arises out of a subpoena issued by the United States District Court for the
17 Eastern District of Louisiana on July 26, 2019 in a pending case before that court involving the
18 same parties: *Wayland Collins et al v. Mark Ingel et al.*, Case No. 2:18-cv-0746-NJB-MBN (the
19 "underlying action"). The underlying action involves an alleged motor vehicle accident that
20 occurred in New Orleans, Louisiana on August 9, 2017, which led Plaintiffs to claim injuries and
21 seek treatment with various medical providers. Defendants claim that medical and billing records
22 reveal that medical treatment for the Plaintiffs was funded or financed by third party, Medport
23 LA, LLC.

24 In the instant motion, Defendants seek an order compelling Medport to produce
25 documents responsive to the subpoena served on it on July 30, 2019. Alternatively, Defendants
26 note that under Fed.R.Civ.P. 45(f), the Court may transfer this Motion to the Issuing Court for
27 resolution. Defendants request transfer because that court is familiar with the issues involved in
28 the litigation, has been actively managing the underlying action, discovery closes shortly – on

1 November 27, 2019. Trial has been set for January 27, 2020, and a similar motion is set for
2 hearing before that court on November 20, 2019.

3 II. ANALYSIS

4 Rule 45(f) gives this Court¹ discretion to transfer subpoena-related motions to the issuing
5 court. *See* Fed.R.Civ.P. 45(f) (“When the court where compliance is required did not issue the
6 subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the
7 subpoena consents or if the court finds exceptional circumstances.”); *see also Moon Mountain*
8 *Farms, LLC v. Rural Community Ins. Co.*, 301 F.R.D. 426, 429 (N.D. Cal. 2014). The party
9 seeking a Rule 45(f) transfer bears the burden of showing that exceptional circumstances are
10 present. Fed.R.Civ.P. 45 Advisory Comm. Notes (2013); *see also Music Grp. Macao*
11 *Commercial Offshore Ltd. v. Does*, 82 F. Supp. 3d 979, 984 (N.D. Cal. 2015).

12 Whether “exceptional circumstances” exist for a transfer turns on the particular facts of
13 each case. *Id.* at 428. Indeed, Rule 45 does not define “exceptional circumstances,” but the
14 Advisory Committee Notes formulate a balancing test. The Advisory Committee Notes state that
15 “transfer may be warranted in order to avoid disrupting the issuing court’s management of the
16 underlying litigation, as when the court has already ruled on issues presented by the motion or the
17 same issues are likely to arise in discovery in many districts,” so long as those interests outweigh
18 the interests of the subpoenaed party in obtaining local resolution of the motion. *Moon Mountain*,
19 301 F.R.D. at 428 (quoting Fed. R. Civ. P. 45(f) Advisory Committee Notes (2013)); *see also*
20 *Judicial Watch, Inc. v. Valle Del Sol, Inc.*, 307 F.R.D. 30, 34 (D.D.C. 2014) (a nonparty’s interest
21 in obtaining local resolution of the motion “must be balanced with the interests in ensuring the
22 efficient, fair and orderly progress of ongoing litigation before the issuing court.”).

23 Here, the Court finds that the factors of judicial economy, docket management, and the
24 risk of inconsistent rulings weigh in favor of transferring the motion to the Issuing Court. The
25 judges assigned to the underlying action are familiar with the case and the discovery issues
26

27 ¹ Courts are in agreement that Rule 45(f) motions to transfer fall within the gambit of non-
28 dispositive matters properly determined by a magistrate judge. *See, e.g., Argento v. Sylvania Lighting*
Servs. Corp., 2015 WL 4918065, at *2 (D. Nev. Aug. 18, 2015).

1 involving medical and billing record relevance and proportionality to the underlying action. In
2 fact, there is a currently scheduled hearing for November 20, 2019 on a motion to compel one of
3 Plaintiff's providers to produce documents. (ECF No. 1, 17). A transfer will minimize any risk
4 of inconsistent discovery rulings and promote judicial economy. The court presiding over the
5 underlying action is in the best position to assess the merits of the dispute, weigh the
6 proportionality issues concerning the discovery sought and address the consequences of
7 Medport's non-compliance. Moreover, with the discovery cutoff and trial date quickly
8 approaching, the Issuing Court is better served to manage its docket by transferring the Motion in
9 order to avoid adversely impacting the underlying action's progression on the timetable set by
10 those judges.

11 With the above considerations in mind, the Court turns to balancing Medport's interests.
12 The primary factor to consider is any burden imposed on Medport by transferring the motion to
13 the issuing court. "Transferring a motion to the jurisdiction where the underlying litigation is
14 pending . . . will require few, if any, modifications of the written submissions." *Wultz v. Bank of*
15 *China, Ltd.*, 304 F.R.D. 38, 45 (D.D.C. 2014). Moreover, absent unusual circumstances, the cost
16 of litigation alone does not constitute an unfair burden. *See Moon Mountain*, 301 F.R.D. at 430.
17 Indeed, the Advisory Committee Notes encourage transferee courts to allow appearances to be
18 made telephonically in the event that a hearing is deemed to be necessary. *See, e.g., Valle del Sol,*
19 *Inc. v. Kobach*, 2014 WL 3818490, *3 (D.Kan. Aug. 4, 2014) (quoting Fed.R.Civ.P. 45(f)
20 Advisory Committee Notes (2013)). Further, Medport would not necessarily need to obtain local
21 counsel as Rule 45(f) expressly provides that a subpoenaed party does not need to obtain out-of-
22 state counsel in the event of a transfer. ("if the attorney for a person subject to a subpoena is
23 authorized to practice in the court where the motion was made, the attorney may file papers and
24 appear on the motion as an officer of the issuing court"); *see also Kobach*, 2014 WL 3818490, at
25 *5.

26 Taking into consideration the issues raised in Defendants' Motion, together with the
27 deadlines already in place, including the close of discovery in approximately two weeks and the
28 trial in a little over 60 days, the Court finds that a response from Plaintiffs and/or Medport is not

1 necessary for the determination of the transfer of this Motion. Medport may raise any arguments
2 or objections to the subpoena or the issues raised in the Motion before the Issuing Court.

3 **III. CONCLUSION**

4 The Court finds that exceptional circumstances exist in this case warranting transfer of the
5 Motion to Compel based on the fact that the transfer advances judicial economy, avoids the
6 potential for inconsistent rulings, and prevents disruption of the management of the underlying
7 action. The Court further finds a *de minimis* burden on Medport, if any burden at all, resulting
8 from the transfer. Therefore, the Court will transfer the Motion to the United States District
9 Court for the Eastern District of Louisiana.

10 **IT IS THEREFORE ORDERED** that Defendants' Emergency Motion to Compel
11 Production of Documents Responsive to Subpoena or, Alternatively, Motion to Transfer
12 Enforcement of Subpoena (ECF No. 1) is **granted** insofar as it requests transfer to the United
13 States District Court for the Eastern District of Louisiana in the pending matter of *Wayland*
14 *Collins et al v. Mark Ingel et al.*, Case No. 2:18-cv-0746-NJB-MBN.

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall transfer the Motion to the
16 Eastern District of Louisiana and close the file in this district.

17
18 DATED: November 12, 2019

19 
20 _____
21 DANIEL J. ALBREGTS
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28